

JUDGE DANA L. RASURE'S GUIDELINES FOR OBTAINING A DEFAULT JUDGMENT

*** * OBTAINING A DEFAULT JUDGMENT IS A TWO STEP PROCESS * ***

Pursuant to Federal Rule of Civil Procedure 55, made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7055, default encompasses two steps: (1) Entry of Default; and (2) Default Judgment.¹

STEP ONE: Entry of Default

Entry of default is a procedural formality. "It is a mandatory prerequisite to the issuance of a default judgment."²

The party requesting an Entry of Default should file a "Request for Entry of Default by the Clerk" with an affidavit or affirmation attached that sets forth the following facts:

1. Date of service of the complaint.
2. Date of issuance of the summons.
3. Date of filing of an affidavit of service.
4. Statement of whether the court fixed a deadline for serving an answer or motion, or whether the 30 (or 35) day time limit applies.
5. Statement that no answer or motion has been received within the time limit fixed by the Court or by Fed. R. Bankr. P. 7012(a).

A form of "Request for Entry of Default by the Clerk" is attached. See Exhibit A.

STEP TWO: Default Judgment

The party seeking a default judgment should file a "Motion for Default Judgment" that sets forth the following:

1. Statement that the party against whom default is requested is not an infant or incompetent person, as required by Fed. R. Civ. P. 55(b)(1).
2. Pursuant to the Servicemembers Civil Relief Act, a statement of "whether or not the defendant is in the military service and . . . necessary facts to support the [statement]; or . . . if the plaintiff is unable to determine whether or not the defendant is in the military service, [statement] that the plaintiff is unable to determine whether or not the defendant is in the military service." 50 U.S.C.A. App. § 521.
3. The party seeking default judgment must demonstrate its entitlement to the relief

¹ See James Wm. Moore et al., Moore's Federal Practice § 55.10[1] (3d ed. 2001).

² 10 James Wm. Moore et al., Moore's Federal Practice § 55.12[3][a] (3d ed. 2001).

sought based upon a proper showing of each element of each claim. The party requesting default judgment should *submit* a proposed “Journal Entry of Default Judgment.”

The Court will determine whether or not judgment should be entered and may set the matter for hearing in order to make such determination.³

If, in order to enable the Court to enter judgment, it is necessary to take an account, determine the amount of damages, establish the truth of any averment by evidence, or make an investigation of any other matter, the Court may conduct such hearings or order such references as it deems necessary and proper.⁴ A court may enter a default judgment without a hearing only if the amount claimed is a liquidated sum or one capable of mathematical calculation.⁵

In very limited circumstances, default judgment may be entered by the Clerk under Rule 55(b)(1).⁶ However, Rule 55(b)(2) requires that default judgment be entered by the Court (i) when a party against whom default is requested has served an answer or motion and then fails to appear at a court hearing, (ii) when relief other than money damages is requested, or (iii) when evidence is required to establish damages.

Rule 55(b) requires that a defendant who has appeared in the action be served with written notice of the motion for default judgment at least three days prior to the hearing on such motion for a default judgment.

A form of “Motion for Default Judgment” and “Journal Entry of Default Judgment are attached. See Exhibits B and C.

³ The Court may require an actual evidentiary hearing when a party seeks a default judgment on allegations of fraudulent intent. See e.g. AT&T Universal Card Services, Corp. v. Sziel (In re Sziel), 206 B.R. 490 (Bankr. N.D. Ill. 1997) (expressing the court’s reluctance to “rubber stamp” default judgment motions when allegations of fraudulent intent are conclusory). Even if the party against whom default is requested fails to appear at such hearing, the movant must present evidence of fraud or the requisite intent. See e.g. FCC Nat’l Bank v. Roberts (In re Roberts), 193 B.R. 828 (Bankr. W.D. Mich. 1996)(credit card company denied default judgment because it failed to produce evidence of debtor’s intent to defraud).

⁴ See Fed. R. Civ. P. 55(b).

⁵ See Hunt v. Inter-Globe Energy, Inc., 770 F.2d 145 (10th Cir. 1985).

⁶ Rule 55(b)(1) permits entry of default judgment if the complaint seeks a sum certain and the plaintiff files a request for entry of default judgment with an affidavit of the amount due. See Rule 55(b)(1). A “sum certain” is an amount that can be fixed by simple calculation or that can be determined by documentation such as an invoice. (A claim for a specific amount does not make the sum certain.)

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OKLAHOMA**

IN RE:

DOE, JOHN,

Debtor.

JANE BROWN,

Plaintiff,

v.

JOHN DOE,

Defendant.

**Case No. 00-00000-R
Chapter 7**

Adv. No. 00-00000-R

REQUEST FOR ENTRY OF DEFAULT BY THE CLERK

Pursuant to Federal Rule of Civil Procedure 55(a), made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7055, Plaintiff Jane Brown (the “Plaintiff”) respectfully requests Entry of Default by the Clerk against Defendant John Doe (the “Defendant”) for failure to plead or otherwise defend in this adversary proceeding as required by law. In support of this request, the Plaintiff states as follows:

1. The Plaintiff filed her Complaint against the Defendant on April 1, 2005. A Summons was duly issued to the Defendant by the Clerk of the Bankruptcy Court on April 1, 2005.
2. As evidenced by the Return of Service filed on April 6, 2005, the Defendant was properly served with the Summons and Complaint on April 3, 2005.
3. The time for Defendant to answer or otherwise respond to the Complaint has expired.
4. The Defendant has not filed an answer or made any response to the Complaint in attempt to defend this matter.

5. The Affidavit of Alice B. Attorney is attached hereto in support of this Request.

Dated this ____ day of _____, 200____.

ABC LAW FIRM

Alice B. Attorney, OBA #_____

[Address/Telephone/Fax/Email]

ATTORNEY FOR PLAINTIFF

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OKLAHOMA**

IN RE:

DOE, JOHN,

Debtor.

**Case No. 00-00000-R
Chapter 7**

JANE BROWN,

Plaintiff,

v.

Adv. No. 00-00000-R

JOHN DOE,

Defendant.

AFFIDAVIT OF ALICE B. ATTORNEY

STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA)

I, Alice B. Attorney, being of lawful age and having first been duly sworn upon oath, state:

1. I am an attorney of record for Plaintiff Jane Brown (the "Plaintiff") in the above-referenced adversary proceeding. I am authorized to make this Affidavit and have personal knowledge of the facts stated herein.

2. The Plaintiff filed her Complaint against Defendant John Doe (the "Defendant") on April 1, 2005. A Summons was duly issued to the Defendant by the Clerk of the Bankruptcy Court on April 1, 2005.

3. As evidenced by the Return of Service filed on April 6, 2005, the Defendant was properly served with the Summons and Complaint on April 3, 2005.

4. Pursuant to Federal Rule of Bankruptcy Procedure 7012, the Defendant had thirty days to answer the Complaint. The time for the Defendant to answer or otherwise respond to the

Complaint has now expired.¹ The Defendant has not filed an answer or otherwise responded to the Complaint.²

FURTHER, AFFIANT SAITH NOT.

Alice B. Attorney

Subscribed and sworn to before me, the undersigned Notary Public, on this ____ day of _____, 200____.

[SEAL]

Notary Public
No. _____

My Commission Expires: _____

¹ Statement of whether the court fixed a deadline for serving an answer or motion, or whether the 30 (or 35) day time limit applies.

² Statement that no answer or motion has been received within the time limit fixed by the court or by Fed. R. Bankr. P. 7012(a).

EXHIBIT B

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OKLAHOMA**

IN RE:

DOE, JOHN,

Debtor.

JANE BROWN,

Plaintiff,

v.

JOHN DOE,

Defendant.

**Case No. 00-00000-R
Chapter 7**

Adv. No. 00-00000-R

MOTION FOR DEFAULT JUDGMENT

On March 1, 2005, the Plaintiff Jane Brown (the “Plaintiff”) filed her Complaint seeking a determination that a debt in the amount of \$5,000 incurred by the Defendant John Doe (the “Defendant”) is nondischargeable pursuant to 11 U.S.C. § 523(a)(5) (the “Complaint”). On June 1, 2005, the Clerk of the Bankruptcy Court entered an Entry of Default against the Defendant in accordance with Federal Rule of Civil Procedure 55(a), made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7055.

Because the Defendant failed to answer or appear in this proceeding and is in default under Federal Rule of Civil Procedure 55(a), the matters alleged in the Complaint are deemed true. The Plaintiff seeks judgment against the Defendant in the amount of \$5,000 pursuant to Section 523(a)(5) of the Bankruptcy Code (“Section 523(a)(5)”) as alleged in the Complaint. The Complaint

alleges facts that are sufficient for the Court to grant judgment under Section 523(a)(5).¹ The Plaintiff and Defendant were divorced in 2004 pursuant to a Divorce Decree filed on March 1, 2004, in the District Court of Tulsa County, Oklahoma, Case No. XX-00-0000 (the “Divorce Decree”). The Divorce Decree provided that the Defendant would pay to the Plaintiff the amount of \$5,000 “in support and maintenance” of the Plaintiff.² A copy of the Divorce Decree is attached hereto as Exhibit A.

Pursuant to 11 U.S.C. § 523(a)(5) and Federal Rule of Civil Procedure 55, the Plaintiff is entitled to judgment against the Defendant in the amount of \$5,000.

The Defendant is not an infant nor an incompetent person. There are no facts indicating that the Defendant is in the military service. The Defendant’s bankruptcy petition filed in the above-referenced bankruptcy case indicates that the Defendant is unemployed.³ This declaration is made in support of the Plaintiff’s Motion for Default Judgment under Federal Rule of Bankruptcy Procedure 7055 and Federal Rule of Civil Procedure 55(a) and in compliance with the Servicemembers Civil Relief Act, 50 U.S.C.A. App. § 521.

WHEREFORE, the Plaintiff prays for judgment in her favor and against the Defendant as

¹ The party seeking the default judgment must demonstrate its entitlement to the relief sought based upon a proper showing of each element of each claim. The court will determine whether or not judgment should be entered and may set the matter for hearing in order to make such a determination.

² If, in order to enable the court to enter judgment, it is necessary to take an account, determine the amount of damages, establish the truth of any averment by evidence, or make an investigation of any other matter, the court may conduct hearings or order such references as it deems necessary and proper.

³ Pursuant to the Servicemembers Civil Relief Act, a statement of “whether or not the defendant is in the military service and . . . necessary facts to support the [statement]; or . . . if the plaintiff is unable to determine whether or not the defendant is in the military service, [statement] that the plaintiff is unable to determine whether or not the defendant is in the military service.” 50 U.S.C.A. App. § 521.

set forth herein [and in the Complaint]. A proposed Journal Entry of Default Judgment has been submitted simultaneously herewith.

Dated this ____ day of _____, 200____.

ABC LAW FIRM

Attorney Name, OBA #_____
[Address/Telephone/Fax/Email]
ATTORNEY FOR PLAINTIFF

EXHIBIT C

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OKLAHOMA**

IN RE:

DOE, JOHN,

Debtor.

JANE BROWN,

Plaintiff,

v.

JOHN DOE,

Defendant.

**Case No. 00-00000-R
Chapter 7**

Adv. No. 00-00000-R

JOURNAL ENTRY OF DEFAULT JUDGMENT

Before the Court is the Motion for Default Judgment filed by Plaintiff Jane Brown (the “Plaintiff”) on June 1, 2005 (the “Motion”). On March 1, 2005, the Plaintiff filed her Complaint seeking a determination that a debt in the amount of \$5,000 incurred by Defendant John Doe (the “Defendant”) is nondischargeable pursuant to 11 U.S.C. § 523(a)(5) (the “Complaint”). On June 1, 2005, the Clerk of the Bankruptcy Court entered an Entry of Default against the Defendant pursuant to Federal Rule of Civil Procedure 55(a), made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7055. The Plaintiff now seeks an entry of default judgment against the Defendant pursuant to Federal Rule of Civil Procedure 55(b).

The Court, having reviewed the pleadings in the adversary proceeding, the Chapter 7 case of the Defendant, Case No. 00-00000-R, and the relevant legal authorities, and being fully advised, finds that default judgment should be entered against the Defendant because the debt incurred by the Defendant was in the nature of support and maintenance of the Plaintiff and is a

nondischargeable debt under Section 523(a)(5) of the Bankruptcy Code. See 11 U.S.C. § 523(a)(5).

Based upon the allegations contained in the Complaint and the undisputed admission of the Defendant, the Court finds that the Plaintiff has established her case as a matter of law. The Plaintiff's Motion is therefor granted and the Defendant's debt to the Plaintiff in the amount of \$5,000 is excepted from discharge.

SO ORDERED this ____ day of _____, 200____.

Bankruptcy Judge